

Chapter 8

Housing Issues



The Servicemembers Civil Relief Act Helps Servicemembers with Affordable Mortgages

Any active duty soldier who owns a home has rights under federal law that can help with avoiding foreclosure. The Servicemembers Civil Relief Act (SCRA)¹⁸ protects servicemembers from foreclosures of mortgages, deeds of trusts and other security devices. Intended to relieve servicemembers of certain civil obligations so that they can focus on their military service, Section 533 of the SCRA restricts mortgage servicers¹⁹ from foreclosing on active duty homeowners. The SCRA only applies if the servicemember took out the loan in question *before* he or she began active duty. This is an important part of the law. If the loan originated after active duty, the law does not apply and a servicemember in default most likely will not be able to rely on the SCRA to prevent foreclosure.

In addition to showing that they took out the loan before enlisting in active duty, servicemembers will also have to demonstrate how their military service affected their ability to pay their mortgages. For example, servicemembers who took a cut in pay to enlist or whose spouses lost their jobs after moving to a new part of the country can likely count on the SCRA to protect them from foreclosure. Fortunately, courts tend to interpret the SCRA broadly in favor of the homeowner, meaning that servicemembers may just need to make a general argument that their military service has affected their finances in order to qualify for protection. Provided the above conditions are met, the SCRA will likely prevent most foreclosures without court approval. The mortgage servicer may choose not to take the matter to court. Rather than incur costly legal fees, many mortgage servicers will put the foreclosure on hold and try to work out a loan modification, forbearance, or some other agreement designed to help the homeowner reinstate his or her account. For a servicemember to determine if the SCRA applies to his or her situation, that servicemember should contact the mortgage servicer and explain the circumstances. The mortgage servicer will likely put all foreclosure proceedings on hold.

¹⁸ 50 U.S.C. App. §§ 501 *et seq.*

¹⁹ Your mortgage servicer is the bank or financial institution to which you make your monthly mortgage payment, e.g. Bank of America, Wells Fargo, Ocwen, etc.

In addition to preventing many foreclosures, the SCRA can lower a servicemember's monthly mortgage payments. The SCRA sets a 6% cap on interest rates for home loans and other obligations—as long as the servicemember took on the obligation before enlisting in active duty. If a servicemember's interest rate is above 6%, he or she should contact the mortgage servicer and ask for a rate reduction under the SCRA. The servicemember should be prepared to provide a copy of his or her military orders no later than 180 days after termination or release from active military service.

Not all mortgage servicers are familiar with the protections servicemembers receive under the SCRA, while others may misinterpret the law's scope. Therefore, if a mortgage servicer notifies the servicemember that the SCRA does not apply, the servicemember should seek a second opinion. The servicemember may want to contact an attorney who is familiar with the SCRA. Trained VA counselors can also be contacted at the servicemember's nearest Regional Loan Center at 877-827-3702.

Finally, even if the SCRA does not apply to the servicemember's circumstances, the mortgage servicer needs to be aware that the servicemember is on active duty or has recently been discharged. Many lending institutions will assign a specialist to the account with experience in working with members of the military. In addition, the mortgage servicer may also be more accommodating in trying to postpone a foreclosure in recognition that military service may have caused financial hardship.

Mortgage Scams: How to spot them and how to avoid them

If a homeowner has fallen behind on his or her mortgage, a law firm or other foreclosure rescue group may call claiming that it can help the homeowner avoid foreclosure. In return, the law firm or company may ask the homeowner to pay an upfront fee and a monthly retainer. In almost every circumstance, the homeowner should decline this offer no matter how convincing the sales agent may sound on the phone. Under Tennessee law, Tenn. Code Ann. § 47-18-5402, individuals and foreclosure rescue companies are prohibited from charging an upfront fee to assist a customer with a loan modification.

Taking advantage of public information, including property recordings that show that a homeowner is in default, mortgage rescue outfits reach out to prospective clients offering their “expertise” in obtaining a loan modification, refinance or principal forgiveness. These outfits, however, often neglect their clients once they receive their upfront fees. They usually also have little experience in the first place in helping homeowners qualify for mortgage assistance.

Mortgage rescue outfits often misrepresent the modification process claiming that homeowners require the expensive services of their firm to obtain results. That’s almost never true. Although some may occasionally help homeowners in default, others have attracted the attention of state and federal law enforcement for deceptive practices that have caused great harm to their clients. If a homeowner is already having trouble paying a mortgage, the last thing that homeowner needs is to fall victim to a costly scam. Homeowners should be wary of anyone soliciting to help with their mortgage problems. Homeowners should be skeptical of online companies and they should enlist reputable help from people they know have their best interests in mind.

Free Mortgage Assistance

Rather than rely on expensive and often ineffective firms for help, homeowners facing foreclosure should turn to free HUD-certified housing counselors who can help them navigate the often confusing world of mortgage assistance. Housing counselors, who usually receive their salaries through state and federal grant programs, are trained to help homeowners organize their finances and loan paperwork so that they can apply for loan modifications. A loan modification can help a homeowner avoid foreclosure by lowering the monthly payments and forgiving or restructuring the past due amount. To speak with a free HUD-certified housing counselor, call the toll-free HOPE Hotline at 888-995-HOPE.

The National Mortgage Settlement: Making Foreclosure a Last Resort

In April 2012, 49 states, the federal government, and the nation's five largest mortgage servicers entered in the National Mortgage Settlement, a historic agreement that provided struggling homeowners with a set of protections aimed at making foreclosure a last resort.²⁰ In essence, the National Mortgage Settlement requires mortgage servicers like Bank of America and Wells Fargo to follow a strict set of guidelines before they foreclose on a property. The end result is that homeowners face an easier road if they are trying to qualify for a loan modification. The National Mortgage Settlement also provides for special protections for active servicemembers and veterans.

Prior to the National Mortgage Settlement, homeowners tried to apply for available mortgage assistance programs only to have their mortgage servicer lose their paperwork or fail to follow through on deals offered just weeks earlier. This settlement stopped these types of abuses by requiring the mortgage servicer to work closely with their homeowners.

Under the National Mortgage Settlement, the five mortgage servicers must reach out to homeowners in default and provide each distressed homeowner with a single point of contact. In turn, the contact will guide them on what financial paperwork they need to submit in order to qualify for assistance. The mortgage company will also need to evaluate the homeowners for

²⁰ For more information about the National Mortgage Settlement, visit www.nationalmortgagesettlement.com.

eligibility for all forms of relief, including a modification provided for under the settlement or other federal programs, including the Home Affordability Modification Program (HAMP).

The National Mortgage Settlement also requires that mortgage companies follow strict timelines in evaluating applications for mortgage assistance like loan modifications while keeping homeowners updated regularly. In order to lower monthly payments, the mortgage servicer may reduce the interest rate, extend the term of the loan, forgive some of the unpaid principal or employ a combination of these strategies. This settlement has standardized the loan modification process while helping homeowners in default apply for assistance in a fair and orderly way.

The National Mortgage Settlement only applies to Bank of America, Wells Fargo, JP Morgan Chase, Citi and old Ally/GMAC loans, most of which have been transferred to Ocwen Financial Corporation. A separate settlement with Ocwen, announced in December 2013 by 49 states and the Consumer Financial Protection Bureau (CFPB), applies to all other Ocwen loans, including loans formerly serviced by Litton Loan Servicing LP and Homeward Residential Inc. Mortgage companies not covered by the two settlements still have to comply with the CFPB's new mortgage rules, which went into effect in January 2014. The new rules require mortgage companies to work closely and promptly with struggling homeowners and evaluate them for modifications and other alternatives to foreclosure.

Benefits to Servicemembers and Veterans under the National Mortgage Settlement

The National Mortgage Settlement contains a number of provisions to protect servicemembers' and veterans' rights and provide other significant benefits. The following is a list of some of the protections involved:

- **Wrongful foreclosures:** After a mandatory review, it was determined that the five mortgage servicers foreclosed on some servicemembers in violation of the SCRA between January 2006 and April 2012. The banks were required to provide any servicemember who was a victim of such a wrongful foreclosure with a payment equal to the servicemember's lost equity, plus interest, and an additional lump sum.
- **Interest Charged in Excess of 6%:** The five mortgage servicers also conducted a thorough review to determine whether any servicemember, from January 2008 to April 2012, was charged mortgage interest in excess of 6% after a request to lower the interest rate in violation of the SCRA. Servicers were required to provide a payment equal to a refund plus interest of any amount in excess of 6%, plus triple the amount refunded or \$500 (whichever is larger).
- **Permanent Change of Station (PCS) orders:** Under the DOD's Homeowners' Assistance Program (HAP), certain servicemembers who are forced to sell their homes at a loss due to a PCS order may be partially compensated for the loss. However, under the governing statute for HAP, only certain PCS ordered servicemembers are eligible for benefits. Under the settlement, the five mortgage servicers have provided short sale agreements and deficiency waivers to certain servicemembers who are currently ineligible for HAP.
- **Veterans Housing Benefit Program:** \$10 million was paid into the Veterans Housing Benefit Program Fund through which the VA guarantees loans provided on favorable terms to eligible veterans. In addition, many veterans with VA-guaranteed mortgages were also

eligible for relief provided through the servicers' consumer relief obligations under the settlement.

- **Foreclosure Protections for Servicemembers Receiving Hostile Fire/Imminent Danger Pay:** For loans secured by servicemembers when they were not on active duty, the SCRA prohibits servicers from foreclosing on active duty servicemembers without first securing a court order. The settlement extends this protection to all servicemembers, regardless of when their mortgage was secured, who within nine months of the foreclosure received Hostile Fire/Imminent Danger Pay and were stationed away from their home.

A foreclosure is rarely in anyone's best interest, including the mortgage servicer. That's why there are free programs available to help homeowners qualify for loan modifications to help keep them in their homes. Aiming to make these programs accessible to all homeowners, the national mortgage settlement is one of many protections people have against foreclosure. If a homeowner is in default, regardless of whether the mortgage is covered under the settlement, the homeowner should contact the mortgage servicer to see what options are available to avoid foreclosure and to stay in the home.

Home Rental Scams

Because servicemembers can be moved around the country frequently, they can be susceptible to rental scams if they must find their own housing off base. Unfortunately, Internet listing services such as Craigslist can contain fake ads. Scammers may copy photos and content from a legitimate ad and then post it on a site using the scammer's contact information. Scammers may post false rental properties based on real listings, and then offer special military discounts or very low pricing. To secure the deal, scammers may ask for a security deposit to be wired in advance. Another ruse is to get the servicemember's bank routing information. In some cases, the new servicemember arrives to find other people already living in the home. Legitimate property owners usually ask for money to be paid only once the lease has been signed. Typically, first

month's rent and a security deposit are the only fees required after a potential renter has seen the property and signed a lease. When a potential landlord tells a servicemember that he or she can move into the property without seeing it, this could be a sign of a scam.

Rental property that is advertised by a property owner who lives in another country may also be a red flag. The property owner may entice the servicemember with a detailed story to gain their trust. The information may focus on trying to get someone to rent the property at a low price just because they want someone to stay there while the property owner is away. There are websites available to check rental values in the area to see if the price is consistent with the average rate in that area.

Some scammers will try to get information in order to gain access to bank accounts. The fake property owner may ask a servicemember to wire the funds to a friend. The transaction will produce a receipt to show the scammer that the servicemember has funds. Unfortunately, this receipt may show just enough bank account information for the scammer to try to gain access to the account. Servicemembers who are potential renters should never give out money or personal information without researching the rental property company first.

When it comes to electronic mail, there are a few signs that indicate if a scam is involved. E-mails showing misspelled words, grammatical errors, and a lot of capitalization are some examples. Beware of e-mails from another country as well. Many scammers use free e-mail address services like the following: Gmail, Yahoo, AOL, Hotmail, etc. The presence of a free e-mail service coupled with one of the other signs can indicate that a scam is involved. It is important to keep computers protected by keeping the most updated anti-virus software loaded on the computer.